



Comptroller General  
of the United States  
Washington, D.C. 20548

Barbared 149488

## Decision

**Matter of:** Vereinigte Gebäudereinigungsgesellschaft

**File:** B-252546

**Date:** June 11, 1993

Michael J. Murphy, Esq., von Maur & Partners, for the protester.

Bobby G. Henry, Jr., Esq., and Elizabeth DiVecchio Berrigan, Esq., Department of the Army, for the agency.

Richard P. Burkard, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that agency lost and thus failed to consider the protester's low bid is denied. The agency is not permitted to make award to a firm whose bid may have been lost by the government prior to the bid opening date; to do so would not be consistent with preserving the integrity of the competitive bidding system.

### DECISION

Vereinigte Gebäudereinigungsgesellschaft protests the failure of the Department of Army to consider its bid under invitation for bids (IFB) No. DAJA04-93-B-0031 for custodial services. The protester alleges that it deposited its bid in the designated bid box and that the agency mishandled and lost the bid prior to bid opening.

We deny the protest.

The IFB, as amended, scheduled bid opening for February 15 at 10 a.m. Seven bids were read at the bid opening, but not one from the protester. A representative of Vereinigte attended the bid opening and, upon learning that its bid was not included, advised the agency he had submitted a bid on February 11. The representative stated that its bid price was DM 787,540.85, while the low bid read at the bid opening was DM 803,470.00. The bid opening official noted the price read by Vereinigte's representative and informed the firm that he would search for the bid. The bid was not located.

Later that day, the protester stated in writing to the agency that it had deposited its bid in the bid box designated in the IFB and reiterated its bid price.

Subsequently, Vereinigte provided the agency with an "original work copy" of its bid, which purported to establish the price contained in the missing bid. In addition, the protester stated that it could provide a statement from a security guard who witnessed him place the bid in the designated bid box on February 11. On March 1, the agency advised the protester that its bid had not been found and that the firm's "original work copy" could not be considered. This protest followed.

Vereinigte argues that it has clearly demonstrated that it deposited its bid at the designated location on February 11. The firm has provided affidavits from its representative who attended the bid opening as well as from the security guard who recalls seeing Vereinigte's representative deposit an envelope in the bid box. The protester thus concludes that the agency mishandled the bid after its receipt.

The Army has submitted sworn statements from each of the agency employees who opened the locked bid box between February 11 and the bid opening, and each has stated that he or she does not recall seeing, either in or out of the bid box, a bid submitted by Vereinigte for this IFB. The agency argues that "[w]hen all the relevant evidence is reviewed, the protester is unable to prove by a preponderance of evidence that its bid was timely filed."

We will not resolve the dispute about whether the bid was timely filed, since even if we accept the protester's account of the facts and conclude that the agency lost the protester's timely filed bid, the agency would be prohibited from awarding the contract to Vereinigte on the basis of the missing bid or a resubmitted bid.

We understand that Vereinigte feels that through no fault of its own, it has been deprived of a contract which should have been awarded to it. Nevertheless, where an ostensible bidder has complied with all of the requirements of a particular solicitation, but its bid has been lost after being received at the procuring activity prior to bid opening, the vendor cannot be permitted to resubmit its bid since there would be no certainty that a subsequently submitted copy would be identical to the original that was received and lost. Rodeo Road Equip., Inc., B-242093, Mar. 7, 1991, 91-1 CPD ¶ 256. Displacing an otherwise successful bidder on the basis of a bid provided after the opening date would not be consistent with maintaining the integrity of the competitive system. Id.

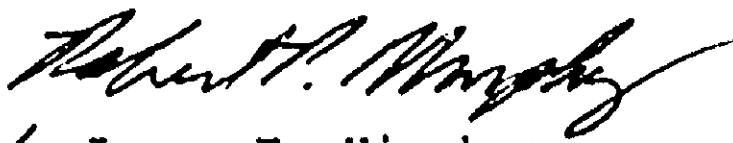
The protester asserts that the circumstances of this case fall within the narrow exception permitting acceptance of an otherwise late duplicate bid where the record clearly and convincingly establishes that the duplicate is identical to

the original bid and that the integrity of the competitive system will not be compromised by accepting the duplicate bid. See Physio Control Corp., B-234559; B-234559.2, June 26, 1989, 89-1 CPD ¶ 599; 50 Comp. Gen. 325 (1970). The protester asserts that the "original work copy" of the bid submitted to the agency after bid opening constitutes a "duplicate" bid and therefore may be accepted. We disagree.

The record shows that the alleged "duplicate" bid is not a duplicate but merely the workpapers used to prepare the bid. The protester itself concedes that the "duplicate" is "an original work copy" of its bid and states that it is "substantially identical." The circumstances here do not fall within the exception. See Delbert Bullock, B-208496, Sept. 7, 1982, 82-2 CPD ¶ 201.

While it is unfortunate, even with appropriate procedures in place, an agency may occasionally misplace a bid. The occasional negligent loss of a bid by an agency does not entitle the bidder to any relief. Interstate Diesel Serv., Inc., B-244842.2, Sept. 27, 1991, 91-2 CPD ¶ 304.

The protest is denied.

  
for James F. Hinchman  
General Counsel